

**Consideration of approval of a nonrule policy document to assist with the evaluation of petitions pertaining to the exemption from motorboat speed limits which otherwise apply on small lakes; Administrative Cause No. 11-062L**

IC 14-15-3-11 through IC 14-15-3-12.5 govern processes to adopt, amend, condition, or repeal rules to exempt boats from the general prohibition on motorboat operations in excess of ten miles-per-hour on a “small lake”. A “small lake” is one with a surface area of less than 300 acres, and to qualify for the exemption, the lake must contain at least 70 acres. Currently, 15 lakes are exempted as codified at 312 IAC 5-11.

Petitions pursuant to this statutory authority are infrequent, but the anticipated processes are unusual or perhaps unique. First, a petition is submitted to the agency and evaluated as to whether the lake is of an appropriate size and contains a sufficient number of signatures from abutting property owners. The proposed nonrule policy document would provide guidance to the Division of Law Enforcement and to the public concerning how the first stage would be addressed. Included is an opportunity for administrative review of what would be considered a “status determination” under IC 4-21.5. Second, if the prerequisites of a petition are satisfied, the Natural Resources Commission evaluates the terms and limits for possible rule adoption under IC 4-22, including factors pertaining to safety and environmental protection.

Considerable uncertainty now exists as to how the Department of Natural Resources and the Commission are to process petitions to adopt, amend, condition, or repeal these rules. The proposed nonrule policy document would assist with achieving transparency and consistency. The Division of Law Enforcement recommends the nonrule policy document for approval.

**NATURAL RESOURCES COMMISSION  
Information Bulletin #67**

**SUBJECT: Small Lakes (Exemptions from Speed Limits)**

1. Purpose

This information bulletin is intended to assist with implementing responsibilities of the department of natural resources and the natural resources commission pertaining to exemptions from a general prohibition on the operation of motorboats on a small lake. In particular, for consideration are determining whether a lake is a “small lake” and determining what constitutes a majority of abutting property owners. The primary scope of the information bulletin is IC 14-15-3-11 through IC 14-15-3-12.5.

2. Background

IC 14-15-3-1 defines “small lake” as a public body of water having a surface area of 300 acres or less (generally excluding channels from the surface area determination).

IC 14-15-3-10 sets the motorboat speed limit on small lakes at 10 miles per hour.

IC 14-15-3-11 sets a process for the natural resources commission (the “commission”) to exempt qualified small lakes from the 10 MPH speed limit set by IC 14-15-3-10. To qualify, a small lake must

have a surface area containing more than 70 acres. The commission may adopt rules allowing a speed limit exemption, during periods specified by statute, if the following conditions exist:

- (1) A majority of the abutting property owners petitions the commission to establish an exemption.
- (2) An unreasonable hazard to persons would not result.
- (3) An unreasonable harm to fish, wildlife, or botanical resources would not result.

Small lakes with exemptions are listed and the exemptions described at 312 IAC 5-11.

The commission may also rescind or amend an exemption. The process for seeking an amendment or rescission is similar to the process for establishing an exemption. IC 14-15-3-12 and IC 14-15-3-12.5.

### 3. Guidelines

This information bulletin provides guidelines for how the department of natural resources, division of law enforcement (the “division of law enforcement”), shall evaluate the size of a lake, as well as property ownership abutting a lake to determine whether a majority have signed the petition.

#### *A. Qualification as a “Small Lake”:*

The division of law enforcement shall review a petition to determine if the petition includes the required statutory language:

- IC 14-15-3-11 for new petitions; and
- IC 14-15-3-12 and 14-15-3-12.5 for amendments and rescissions.

A petition must specify one (1) of the following as an allowable period under IC 14-15-3-11(b):

- Each day of the week (Sunday through Saturday) from 1 p.m. to 4 p.m. (local time prevailing);
- Monday, Thursday, and Saturday from 1 p.m. to 4 p.m. (local time prevailing);
- Saturday from 1 p.m. to 4 p.m. (local time prevailing);
- Each day of the week (Sunday through Saturday) from sunrise to sunset if the small lake is owned, leased, or operated in whole or in part by a “political subdivision” (as defined in IC 36-1-2-13); or
- Each day of the week (Sunday through Saturday) from sunrise to sunset if the small lake is connected by a natural channel to a lake having a surface area of more than three hundred (300) acres

The division of law enforcement shall review the surface area of a lake under IC 14-15-3-1 to determine if the lake qualifies as a “small lake”. To qualify, the surface area must be more than 70 acres but no more than 300 acres. In accordance with IC 14-15-3-1, most channels are excluded. A line drawn from point to point of a channel denotes the limits of the lake area.<sup>1</sup>

#### *B. Abutting Property Owners:*

An “abutting property” refers to property which immediately adjoins the shoreline of a lake. The division of law enforcement may use the definition for “shoreline or water line” in IC 14-26-2-4 to assist with identifying the shoreline for any lake which is subject to this information bulletin.

The term “abutting property” does not include property which enjoys access to a lake by way of an easement or right-of-way across property which immediately adjoins the shoreline. In accordance with

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<sup>1</sup> This method is consistent with the method used for commercial gear restrictions near bays and inlets of the Ohio River in 312 IAC 9-8-6(i).

the definition of “small lake” in IC 14-15-3-1, property that is on a channel to the lake but not abutting the main body of the small lake is not an abutting property. Property that abuts the main body of the small lake and also abuts a channel is included. A line drawn from point to point of a channel denotes the limits of the lake area.

To qualify as signatories on a petition, “abutting property owners” must own abutting property. Renters, lessees, and guests do not qualify. Based upon taxable parcels, each taxable parcel equals one vote. A signatory from each taxable parcel that is an abutting property constitutes a “majority of the abutting property owners”.

If a dispute exists between or among persons with shared interests (such as a land trust, joint tenancy, life estate and remainder, or a condominium) on a taxable parcel, and the dispute is communicated in writing to the division of law enforcement before the state boating law administrator makes a status determination as described below, the parcel shall be excluded from those counted in support of a petition. The division of law enforcement may, however, count the parcel in support of the petition if the dispute is decided in accordance with a decision-making process that governs the internal management of the parcel or decided following a judicial determination or alternative dispute resolution.

The division of law enforcement may consult with a petitioner and with other interested persons to help determine whether statutory requirements are satisfied. The division of law enforcement has discretion to determine whether and under what circumstances to allow a modification to a petition.

Each petition shall be evaluated considering the specific circumstances of the small lake and property ownership abutting the small lake. Circumstances which are not clearly addressed by this information bulletin shall be determined on a case-by-case basis. Following the completion of its evaluation and investigation of the lake and the petition, the district of the division of law enforcement in which a lake is located shall make a report and recommendations to the state boating law administrator.

#### *C. Status Determination:*

The state boating law administrator shall make a determination of status under IC 4-21.5-3-5(a)(5) whether a petition to establish, amend, or rescind an exemption (1) applies to a “small lake”; and, (2) includes the signatures of a majority of the abutting property owners. In the event the determination of status is in the affirmative that the subject lake is a “small lake” and that a majority of abutting property owners have signed the petition, the division of law enforcement shall provide notice of the determination to the petitioners, to abutting property owners whose properties were not included in the petition, and to each person who has provided the division of law enforcement with a written request for notification under IC 4-21.5-3-5(b)(4). In the event the determination of status is that the subject lake is not a “small lake” or that a majority of abutting property owners have not signed the petition, the division of law enforcement shall provide notice of the determination to the petitioners and to each person who has provided the division of law enforcement with a written request for notification under IC 4-21.5-3-5(b)(4).

#### *D. Rule Adoption:*

If a determination is made by the state boating law administrator (or by the commission on administrative review or a court on judicial review) that a lake is a “small lake” and that a petition includes a majority of the abutting property owners, the proposal in the petition shall be tendered to the commission as soon as practicable for consideration as to rule adoption under IC 4-22. The department of natural resources may make any recommendation, which is consistent with IC 14-15-3-11, IC 14-15-3-12, and IC 14-15-3-12.5, to support, amend, or decline to adopt a new rule, a rule amendment, or a rule repeal.